SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1974

No. 73-2012

SEATTLE TRUST & SAVINGS BANK, et al.,
Petitioners,

v.

THE BANK OF CALIFORNIA, N.A., and
THE COMPTROLLER OF THE CURRENCY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INTRODUCTION

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 30, 1974.[1]

1. The Petitioners are Seattle Trust & Savings Bank, a Washington State bank, and six national banks: National Bank of Commerce, Pacific National Bank of Washington, Peoples National Bank of Washington, Puget Sound National Bank, Old National Bank of Washington and Seattle-First National Bank. Each petitioning bank maintains its head office and all its branch banking offices in the State of Washington. Respondents are the Bank of California, N.A., a national banking association and the Comptroller of the Currency. Respondents are referred to herein individually by name and collectively as "Respondents". The Washington State Supervisor of Banking, a party to the consolidated proceeding below is petitioning separately.

OPINION BELOW

The opinion of the Court of Appeals is reproduced as Appendix A to this Petition.[2] The District Court's Memorandum decision and the administrative decision of the Comptroller of the Currency, neither of which has been reported, are set forth as Appendix B and C, respectively.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 30, 1974. A petition for rehearing was denied on April 18, 1974 and this petition for certiorari was filed within ninety (90) days of that date. The jurisdiction of the court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

The District Court and the Court of Appeals affirmed the Comptroller's approval of the Bank of California's application to establish a second branch banking office in Seattle. The questions presented by this Petition are:

1. Whether the Bank of California is "situated" in Seattle for purposes of 12 U.S.C. §36(c), the federal branch banking statute; and

2. Whether the Bank of California maintains its "principal place of business" in Seattle for purposes of RCW 30.40.020, the Washington branch banking statute.

STATUTORY PROVISIONS INVOLVED

Section 36 of Title 12 of the United States Code (12 U.S.C. §36 and §30.40.020 of Title 30 of the Revised Code of Washington (RCW 30.40.020) are set forth in Appendix D to this Petition.

2. 492 F.2d 48 (9th Cir. 1974)

STATEMENT OF THE CASE

The Bank of California was organized in 1864 as a state bank under the laws of California (R., Exhibit A, p. 263[3]). In 1905, it acquired three branches outside of California. These branches were located in Seattle and Tacoma, Washington and in Portland, Oregon (R., Exhibit A, p. 263-64). In 1910, the Bank of California converted to a national bank (Exhibit A, p. 264). Since the Washington and Oregon Branches were still in operation on February 25, 1927, the Bank of California was authorized to continue to maintain them under the grandfather rights contained in §7 of the McFadden Act (12 U.S.C. §36(a)). The Bank of California presently has over 60 branch banking offices in California (R., Exhibit A, p. 24) and maintains its head office, as designated by its Articles of Association, in San Francisco (R., p. 363). It is one of only two national banks that enjoys the right to operate branches in states other than the state in which its head office is located (R., Exhibit A, p. 7).

In June of 1970, the Bank of California applied to the Comptroller for permission to move its existing Seattle branch office to a new location in the same city and to establish a new branch at the vacated site (R., Exhibit A, p. 225). The Comptroller received numerous protests with respect to the Bank of California's proposal to establish a second branch office in Seattle (R., Exhibit A, p. 4; Appendix, p. A-18). Despite these protests which challenged the legal basis for an additional interstate branch office, the Comptroller approved the application on October 5, 1971. R., Exhibit A, p. 1; Appendix, p. A-17).

3. References are to the record that was before the Court of Appeals. The Comptroller's administrative file is Exhibit A to the record.

Subsequent to the Comptroller's action, suit was brought by the petitioning banks in the District Court for the Northern District of California to enjoin the Bank of California from establishing the proposed second branch office in Seattle. Jurisdiction of the District Court was invoked under 28 U.S.C. §1331(a) and 28 U.S.C. §1332(a) because of the presence of issues arising under the National Banking Act (12 U.S.C. §1, *et seq.*), diversity of citizenship and an amount in controversy in excess of $10,000 (R., p. 1). The Comptroller of the Currency intervened as a party defendant (R., p. 28), and the Washington Supervisor of Banking intervened as a party plaintiff in support of petitioners (R., p. 50).[4]

Petitioners and Respondents separately moved for summary judgment based on the Comptroller's administrative file (R., pp., 58, 116, 189, 194). The District Court agreed with the Comptroller's determination that the Bank of California is "situated" in Seattle for purposes of 12 U.S.C. §36(c) and granted Respondents Motion for Summary Judgment (Appendix, p. A-11). The separate appeals of the Petitioners and the Washington Supervisor of Banking were consolidated in the Court of Appeals. The Court of Appeals affirmed the District Court (Appendix, p. A-11).

4. Petitioners were also supported in the District Court and the Court of Appeals by the Community Banks of Washington and Western Independent Bankers, which appeared as *amicus curiae*.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals Has Erroneously Decided an Important Question of Federal Law Regarding the Authority of a National Bank to Establish an Interstate Branch.

(a) ***An Important Case of First Impression.***

For the first time in history, the Comptroller of the Currency has authorized a national bank to establish a new branch office in a state other than the state in which its head office is located. The decision of the Ninth Circuit Court of Appeals affirming the Comptroller's approval of a Bank of California branch in Seattle raises important questions regarding the power of national banks to establish interstate branches, and the proper application of the concept of "competitive equality." These questions have not been considered by this court. Because of the significant consequences of the Court of Appeals' decision for the nation's banking system, this petition should be granted so that the issues presented can be decided by the Supreme Court.

(b) ***Power to Branch.***

A national banking association has the power under 12 U.S.C. §36(c)(1) to establish a branch within the limits of "the city" in which the "association is situated" provided that state banks are authorized by the law of the state in question to establish a branch in that city. A national bank is further empowered by 12 U.S.C. §36(c)(2) to establish a branch at any other point within the state in which the "association is situated" provided that a branch at that point could be established by a state bank pursuant to state law (Appendix pp. A-32-33).

Petitioners contend that, for purposes of 12 U.S.C. 36 (c), a national bank is "situated" only in the city and state in which its head office, as designated in its articles of association, is located. The Bank of California's head office is located in San Francisco and, according to petitioners' construction of 12 U.S.C. §36(c), that bank has no power to establish a branch outside of California. The Court of Appeals, however, utilized a "plain meaning" approach and in essence determined that the word "situated" means no more than physical presence (Appendix, p. A-14). Since the Bank of California, by virtue of grandfather rights, has an existing branch in Seattle, the Court of Appeals concluded that it is "situated" in Seattle for purposes of 12 U.S.C. §36(c).

(c) ***Ramifications of the Decision.***

The obvious result of the Court of Appeals' decision is that the Bank of California now enjoys the power to establish branches in Washington to the same extent that such branches can be established by Washington banks pursuant to state law. The Bank of California also has an existing Portland branch by virtue of its grandfather rights, and, under the Court of Appeals' decision, can also be deemed to be "situated" in Oregon for purposes of establishing additional branches in that state. Thus the Bank of California is "situated" in three separate states for branching purposes. This tri-state branching authority is unparalleled in this country's commercial banking system and will have a significant impact on the balance of competition among the banks in the western states.

The consequences of the Court of Appeals' decision, however, cannot be confined to the Bank of California

and the three western states in which it operates. The decision provides the basis for an argument by national banks throughout the country that they are entitled to establish branches in any state in which any type of office or physical presence is maintained. For instance, it can be argued that, according to the reasoning of the Court of Appeals, a national bank is "situated" for branching purposes in any state in which it maintains a loan production office or public relations or representative office.[5] By equating "situated" with mere physical presence, the Court of Appeals has opened the door to interstate branching by national banks. This result, of course, is contrary to the legislative history and purpose of 12 U.S.C. §36(c) and could have a devastating impact on our dual banking system and the concept of "competitive equality."

(d) ***Legislative History and Policy.***

The Court of Appeals failed to grasp the significance of the congressional policy to limit branches of a national bank to the single state in which that bank's head office is located. This policy is clearly manifested in the wording of 12 U.S.C. §36(c) and its legislative history. Prior to enactment of §7 of the McFadden Act of 1927, national banks were without power to establish new branches. The McFadden Act included the predecessor of 12 U.S.C. §36(c)

5. 12 U.S.C., § 81 provides that the "general business" of a national bank shall be transacted at its head office and branches established pursuant to 12 U.S.C., § 36. Although this statute limits the conduct of a national bank's "general business" to its head office and branches, functions which are collateral or incidental to a national bank's general business are commonly transacted at locations other than its head office or branches even if such locations are in states other than the state in which the bank's head office is situated. For instance, the Comptroller has approved the use of loan production offices at sites other than the head office or a branch provided that the loans are finally made and approved at the head office or a branch 12 C.F.R. § 7.7380(b).

(1), which authorizes a national bank to establish a branch in the city in which the "association is situated." As stated by Senator Pepper, a co-sponsor of the McFadden Act, during the congressional debate, this section of the Act was designated to authorize national banks to "stand on a footing of equality of opportunity with state banks so far as concerns branches within the limits of the city, town or village in which the *parent institution* is established. . . ." (67 Cong. Rec. 8297) (Emphasis added).

Statewide branching by national banks was authorized by the Glass-Steagall Act of 1933, which added subsection (2) to 12 U.S.C. §36(c). As originally proposed, the branching provisions of the Glass-Steagall Act would have permitted a national bank to branch anywhere within a 50 mile radius of its home office, even if this carried it across state lines (Sen. Rep. No. 584, 72d Cong., 1st Sess., pp. 11, 16). This limited interstate branching authority was rejected by Congress and instead branches were authorized only in the state where the "association is situated." The floor debates indicate the congressional concern over the possibility of interstate branching. There was obvious concern that interstate branching privileges for national banks would upset the equality of opportunity between national and state banks. Senator Glass in explaining the bill assured his fellow senators that the Act would grant branches only extending to state lines.[6]

6. The following exchanges occurred while Senator Glass was explaining his bill during the senate floor debates:

"Mr. Copeland: 'No such association shall establish a branch outside of the city, town, or village in which it is situated unless it'—meaning the association?

"Mr. Glass: Yes.

"Mr. Copeland: Not the branch?

In the only reported decision interpreting §36(c) in the context of an interstate branching question, the Supreme Court of Illinois held that branching by a national bank outside of the state of its domicile is prohibited. *Boatmen's National Bank v. Hughes,* 385 Ill. 431, 53 N.E.2d 403 (1944). The *Boatmen's* case evidences judicial recognition of the congressional intent to restrict national bank branches to the limits of a single state. Although not construing 12 U.S.C. §36(c), other courts have interpreted the term "located" as used in other provisions of the National Bank Act, to mean the place of location of the bank's head office as designated by its articles of association.[7]

"Mr. Glass: No; the association.

". . .

"Mr. Wheeler: Even though they did put them into branches, statewide branches, now, for instance, the holding companies are at Minneapolis, and hold a string of banks through North Dakota, South Dakota, Wyoming, Nebraska, and Montana and under the provisions of this measure they could not turn their holding companies and their affiliates into branch banks, because this would not extend as far as the State line. Is that correct?

"Mr. Glass: Yes, it would extend only to the State line.

"Mr. Wheeler: So that they would have to set up branches in each one of these States.

"Mr. Glass: Undoubtedly they would have to set up a parent bank in each one of these States.

"..." (75 Cong.Rec. 9892-3).

7. In *American Surety Co. of New York v. Bank of California,* 44 F. Supp. 81 (D.C. Ore. 1941), *aff'd.* 133 F.2d 160 (9th Cir. 1943), the Bank of California contended that it was a citizen of Oregon by virtue of the presence of a branch in that state for purposes of the federal jurisdictional statute applicable to national banks. That statute, 28 U.S.C., § 41(16) provided that, for purposes of legal actions, a national bank shall be deemed a citizen of the state in which it is "located." The Ninth Circuit Court of Appeals affirmed the district court's holding that the Bank of California is "located" in California, the state of its principal place of business. Similarly, it has been held that a national bank is "established" in the federal district in which its main office is situated for purposes of the national bank venue statute, 12 U.S.C., § 94. *Leonardi v. Chase National Bank of New York,* 81 F.2d 19 (2d Cir. 1936), *cert. denied,* 298 U.S. 677; *United States National Bank v. Hill,* 434 F.2d 1019 (9th Cir. 1970).

(e) *Competitive Equality.*

Limiting national bank branches to a single state is an important aspect of the policy of "competitive equality" between national and state banking systems. The concept of "competitive equality" and the underlying congressional intent of §36(c) was recognized by this court in *First National Bank of Logan, Utah v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966). In reference to the McFadden Act, this court stated in *First National Bank in Plant City, Fla. v. Dickinson*, 396 U.S. 122 (1969) that the Act reflects the "congressional concern that neither system have advantages over the other in the use of branch banking. . . ." (396 U.S. at 131).

The Court of Appeals in the present case has misinterpreted this congressional policy and has created confusion with regard to the application of the concept of "competitive equality." That court adopted Respondents' argument that "competitive equality" requires that the Bank of California be authorized to open an additional branch in Seattle. In effect, it held that a "branch" of the Bank of California is entitled to be placed on the same competitive footing as a national or state bank whose branches are limited solely to Washington. The court's decision promotes competitive "inequality" rather than equality. The advantage enjoyed by the Bank of California by virtue of its grandfathered interstate branches has now been enhanced to permit the establishment of additional interstate branches and the strengthening of its interstate branching system. No Washington state bank or national bank with its head office situated in Washington enjoys such competitive privileges. The concept of "competitive

equality" does not support the decision of the Court of Appeals and in fact compels a different result.

(f) ***Broadening of Grandfather Rights.***

The presence of a branch of the Bank of California in Seattle is an historic anomaly. The continued existence of that branch was permitted by the grandfather rights contained in the McFadden Act of 1927 (12 U.S.C. §36(a)). By its decision, the Court of Appeals has broadened these rights to permit the establishment of additional interstate branches despite Congressional policy against interstate branching. Grandfather rights cannot be expanded, and certainly not in contravention of the legislative intent and history of the statutes involved. *See Crescent Express Lines v. United States,* 320 U.S. 401 (1943); *United States v. Maher,* 307 U.S. 148 (1939).

2. The Decision of the Court of Appeals Is in Conflict With Washington Law.

(a) ***State Law Regulates Branching by National Banks.***

A national bank is permitted to branch by 12 U.S.C. §36(c) only if and to the extent that a state bank can branch under state law. As stated in *First National Bank in Plant City, Fla. v. Dickinson,* a national bank branch "may be established only when, where and how state law would authorize a state bank to establish and operate such a branch. . . ." 396 U.S. at 130. In effect, §36(c) incorporates or "absorbs" state branching law *First National Bank of Logan, Utah v. Walker Bank & Trust Co.,* 385 U.S. at 262.

The importance of state law to the application of the federal branching statute, 12 U.S.C. §36(c), cannot be overemphasized. In the present case, the Court of Appeals construed the Washington branching statute to permit the

Bank of California to establish a second branch office in Seattle. This construction, which petitioners contend is erroneous, is critical to the outcome of this case because of the important role that state law plays in the determination of branching rights of national banks under §36(c).

(b) ***Washington Branching Law.***

The pertinent section of the Washington Banking Act, RCW 30.40.020, provides that a Washington bank may establish a *de novo* branch in the city in which its "principal place of business is located" (Appendix p. A-35).[8] The Court of Appeals held that the Bank of California can establish a *de novo* branch in Seattle despite the undisputed fact that its head office is located in San Francisco. According to the Court of Appeals, the phrase "principal place of business" as applied to the Bank of California means a branch office rather than its corporate head office as specified in its articles of association and charter. This holding is contrary to the plain meaning of RCW 30.40.020, the Washington bank regulatory scheme and Washington cases construing similar statutes.

The term "branch bank" is defined in the Washington Banking Act as follows:

> " 'Branch bank' means any office or deposit or discount maintained by any bank or trust company, domestic or otherwise, *other than its principal place of busi-*

8. RCW 30.40.020 permits a Washington bank with more than $500,000 paid-in capital and the approval of the Supervisor of banking to establish *de novo* branches in the city or town of its principal place of business, or in any other city or town where there is no existing bank or branch. The statute has been interpreted by the Supervisor of Banking and the Comptroller to also permit *de novo* branching in unincorporated areas of the county in which the bank's principal place of business is located. In all other cases, branches may be established in Washington cities or towns only by acquiring an existing banking facility.

ness, regardless of whether it be in the same city or locality." RCW 30.04.010 (Emphasis added).

The distinction drawn in this definition between branches and "principal place of business" indicates clearly that the phrase "principal place of business" as used in the Washington branching statute does not mean a branch. The definition is applicable expressly to Washington State banks and state banks formed under the laws of other states. When read with the branching statute, RCW 30.40.020, it also becomes applicable to national banks since national banks and state banks formed under the law of other states. establishment of branches is permitted to state banks under applicable law. In other words, if the applicable state law dictates that a state bank cannot use an exiting branch as a basis for establishing a new *de novo* branch, a national bank is similarly restricted.

The concept of a head office or principal place of business as distinguished from a branch is well established under federal and Washington banking law. For instance, 12 U.S.C. § 81 provides that the general business of a national banking association shall be transacted in the "place specified in its organization certificate and in the branch or branches" maintained by the association. *See also,* 12 U.S.C. § 22, which provides that the city of a national bank's "operations of discount and deposit" must be specified in the organization certificate. Similarly, the distinction between head office and branches is reflected in the Washington Banking Act. In addition to the definition of "branch bank" already cited, that Act provides that state banks must maintain corporate books and records "at the corporation's principal place of business" (RCW 30.12.020), and that in the case of a merger, the

merger agreement must specify the "location of the principal and other offices" of the surviving bank (RCW 30.49.040). The concept of a head office or principal place of business as distinguished from branch offices is deeply engrained in the federal and state statutory schemes. The Court of Appeals disregarded this concept completely when it construed the phrase "principal place of business" in RCW 30.40.020 to mean a branch of the Bank of California rather than its head office.[9]

The importance of respecting the distinction between a bank's head office and its branch offices becomes readily apparent when the reasoning of the Court of Appeals is critically analyzed. The court accepted Respondents' argument that the phrase "principal place of business" should be construed to mean the Bank of California's principal place of business "in Washington." As indicated, the Bank of California, by virtue of grandfather rights, operates a branch in Tacoma as well as a branch in Seattle. The Comptroller found that the Seattle branch was the Bank of California's principal place of business because it has more deposits and more employees and key executives than the Tacoma branch (R., Exhibit A, p. 93). What happens if the Tacoma branch grows at a fast rate and eventually attracts more deposits and employees than the

9. The term "principal place of business" as used in RCW 30.40.020 has not been construed by Washington courts. The term "principal place of business" has, however, been construed by the Washington Supreme Court in an analogous situation. *See State ex rel. Harrington v. Vincent*, 144 Wash. 246, 257 P. 849 (1927). The *Vincent* case involved a statutory right of a stockholder to inspect the books and records of a Washington business corporation at its "principal place of business." The Washington court granted the plaintiff-stockholder the right to examine the corporate records of the defendant-corporation at its principal place of business as designated in its articles of incorporation rather than at the office at which the corporation's business was actively conducted.

Seattle branch? Under the reasoning of the Court of Appeals, the Tacoma branch will then become the Bank of California's "principal place of business" for purposes of the application of RCW 30.40.020. This means that the Bank of California would then be in a position to apply for *de novo* branches in Tacoma. The possibility of a moveable or shifting "principal place of business" and its impact on State branching laws points out the fallacy in the lower court's reasoning and underscores the necessity of distinguishing between "principal place of business" and branches. This distinction should be made by recognizing that for purposes of the branching laws, "principal place of business" means one fixed place—the head office as designated in bank's articles of association.

No Washington State bank has the right to designate a branch as its "principal place of business." For instance, a State bank with its head office located in Spokane and a branch in Seattle, cannot claim that its "principal place of business" is located in Seattle under RCW 30.40.020 for purposes of establishing a new *de novo* branch in Seattle. The same applies to a national bank which maintains its main office in a Washington city other than Seattle. The Bank of California alone, by virtue of the Court of Appeals decision, can now use its Seattle branch as a basis for establishing *de novo* branches in Seattle. In effect, the Seattle branch of the Bank of California has been treated as a separate banking entity rather than a mere branch of a California-based national banking association. The unequal treatment and privileges accorded the Bank of California in this case directly conflicts with the concept of "competitive equality."

CONCLUSION

For the reasons stated in this petition, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEATTLE TRUST & SAVINGS BANK, a Bank incorporated under the laws of the State of Washington, THE NATIONAL BANK OF COMMERCE, a national banking association; PACIFIC NATIONAL BANK OF WASHINGTON, a national banking association; PEOPLES NATIONAL BANK OF WASHINGTON, a national banking association; PUGET SOUND NATIONAL BANK, a national banking association; OLD NATIONAL BANK OF WASHINGTON, a national banking association; SEATTLE-FIRST NATIONAL BANK, a national banking association,
Plaintiffs-Appellants,
v.
THE BANK OF CALIFORNIA, N.A.,
a national banking association,
Defendant-Appellee,
and
WILLIAM B. CAMP,
Comptroller of the Currency of the United States,
Intervening Defendant-Appellee.

[Filed Jan. 30, 1974 Clerk U.S. Court of Appeals]

No. 72-2712

JOHN J. McCARTHY,
Supervisor, Division of Banking, Department of General Administration, State of Washington,
Plaintiff-Intervenor-Appellant,
v.
THE BANK OF CALIFORNIA, N.A.,
a national banking association,
Defendant-Appellee,
and
WILLIAM B. CAMP,
Comptroller of the Currency of the United States,
Intervening Defendant-Appellee.

No. 72-2750

On Appeal from the United States District Court
Northern District of California

Before: TRASK and CHOY, Circuit Judges, and
KELLEHER*, District Judge

PER CURIAM:

In this action seven banks in the State of Washington challenged, in the District Court, a decision of the Comptroller of the Currency of the United States granting to the bank of California, N.A., a national banking association, permission to open a new branch in the City of Seattle, Washington. The trial court found that the Comptroller had properly applied summary judgment in favor of defendants. The plaintiff banks and the Washington State Supervisor of Banking, as plaintiff intervenor, appeal. We affirm.

The parties apparently agree that no factual dispute exists and that summary judgment was an appropriate form of disposition by the trial court, each side having so moved the court.

On July 1, 1970, the Bank of California applied to the United States Comptroller of the Currency for permission: (1) to relocate its existing Seattle office to a new location in Seattle, and (2) to establish a new branch at 815 Second Avenue in Seattle, the site of its existing Seattle office. Upon receipt of the application, competing national and state banks and the Washington Supervisor of Banking were notified of the application. Objections were filed to that portion of the application seeking to establish a new branch. The Comptroller allowed presentations by all interested parties and, after an independent investigation

*Honorable Robert J. Kelleher, United States District Judge, for the Central District of California, sitting by designation.

by a national bank examiner and review by his staff, issued his opinion granting the application and setting forth reasons for his decision.

Plaintiffs filed this action to enjoin the Bank of California from taking the Comptroller's authorized action of opening a second branch in the City of Seattle; the Comptroller of the Currency intervened as a defendant and the Washington Supervisor of Banking intervened as a plaintiff. Another group of banks, Western Independent Bankers, have also appeared as *amicus curiae* supporting plaintiffs. Upon cross-motions for summary judgment, the District Court held that the decision of the Comptroller was reasonable and entered judgments for defendants.

Appellants make three contentions here. First, they contend that the District Court erred in approving the Comptroller's determination that the Bank of California is "situated" in Seattle, Washington, for the purposes of Section 36(c) of the National Bank Act which regulates bank branching. Second, appellant's argue that the trial court erred in approving the Comptroller's determination that appellee had its "principal place of business" in Seattle within the meaning of the Washington State branch banking statute, RCW 30.40.020. Finally, appellants assert that the District Court erred in applying an erroneous standard of judicial review of the decision of the comptroller.

We consider first the question raised concerning the proper standard of judicial review of the Comptroller's decision. Although this issue was not clearly presented or determined in the trial court, it does appear from the record that the District Court adopted the view urged by the Bank

of California and the Comptroller that the Courts should uphold the Comptroller's administrative ruling unless he acted "unreasonably, arbitrarily and capriciously" in construing applicable statutes. Although this standard apparently was applied by the District Court, we deem the proper standard of reivew to have been a de novo determination of the legal issues involved herein. We consider the determination in the trial court to have accomplished a result entirely consistent in approach and result with the de novo review requirement.

The arbitrary and capricious standard has been judicially fashioned to protect against the wrongful exercise of discretion by the Comptroller regarding factual controversies. In this case, however, the principal issue was whether the Comptroller has acted within the limitations imposed upon him by federal and state law, not whether he has acted reasonably or unreasonably. If the Comptroller was incorrect in his interpretation of the law, he should have been overruled in the District Court. *First National Bank of Logan, Utah v. Walker Bank & Trust Co.*, 385 U.S. 252, *reh. den.*, 385 U.S. 1032 (1966). This standard of review has been customarily applied to cases involving interpretation of 12 U.S.C.A. § 36(c). *See First National Bank v. Dickinson*, 396 U.S. 122 (1966).

The District Court had before it a review of the legal determinations of the Comptroller. The trial court, and we, may give great deference to the interpretation given a statute by the officer charged with its administration, in this case, the Comptroller of the Currency. *Udall v. Tallman*, 380 U.S. 1 (1965); *Ramapo Bank v. Camp*, 425 F.2d 333, 341 (3rd Cir.), *cert. denied*, 400 U.S. 828 (1970). We consider the record before us to establish a proper de-

termination by the District Court of the applicable law, and, hence, to have been a de novo review of the Comptroller's legal determination.

Appellant's principal contention is that the Bank of California is prohibited from opening a branch in Seattle, Washington, by the National Banking Act, 12 U.S.C. § 36(c), which provides in applicable part as follows:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the *city, town or village in which said association is situated*, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within *the State in which said association is situated*, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks." [Underscoring added.] 12 U.S.C.A. § 36(c).

In appellant's view, the legislative history and obvious purpose of this section of the Act is contrary to the decision of the Comptroller that the Bank of California is "situated" in Seattle, Washington. It is their contention that the Bank of California is "situated" only in the State of California and that any further interstate branching by the Bank of California is prohibited by the statute.

After consideration of the extensive briefs of the parties and of *amici curiae*, we conclude that this statute should not be so construed. The construction which appellants would place on "situated" for the purpose of this section of the Banking Act would prove totally unworkable if applied in other sections of the Act. Throughout the

Banking Act there are numerous provisions which refer to banks which are "situated in" or "located in" certain geographical areas. These provisions exist in the Act with respect to such items as security for government deposits, interest and fiduciary capacity.[1] Such provisions govern the regulation of these aspects of banking by the state in which the bank is "situated" or "located"; they also insure that these national banks have rights equal to those of other banks in a particular state.

If the words "located" or "situated" in these provisions were to refer to the site of the Bank of California's corporate headquarters in San Francisco, then the Bank's performance in the State of Washington of many essential banking functions would be governed by the laws of California. The law of California would control even when these functions are carried on by non-California branches in dealings with local customers and in competition with banks subject to local state statutory limitations. Such an anomaly could not have been intended by Congress in establishing national banking policy through the National Banking Act.

Alternatively, this Court could hold that "situated" in this particular provision is to have a different meaning and import than the words "situated" or "located" in other provisions of the Act. We reject this construction in the absence of clear expression to this effect of congressional intent; we cannot find in the legislative history of the Act any such congressional intent.

1. See, e.g., 12 U.S.C.A. § 24 (authorizing charitable contributions), 12 U.S.C.A § 85 (interest rates which must be charged), 12 U.S.C.A. §371 (interest rates which must be paid), 12 U.S.C.A. § 92 (the power to act as trustee), and 12 U.S.C.A. § 90 (security authorized for safe-keeping of public funds).

Appellant relies upon the expressed general intent of Congress, under the Act, to proscribe or limit interstate banking. This general intent, however, is insufficient to support the strained construction here sought by appellants. In finding that the Bank of California is "situated" in Seattle, Washington, for the purposes of 12 U.S.C.A. § 36(c), we adopt a construction consistent not only with the plain meaning of the statutory language, but also with other provisions of the Banking Act.

This construction is given further support by the past conduct of both state and federal banking officials. For over fifty years the Bank of California has held a document from the State Supervisor of Banking certifying that it is a National Bank located in the State of Washington and allowed there to exercise trust powers. The Superior Court of the State of Washington for King County has reaffirmed that under these statutory provisions applying to banks located in Washington, the Bank of California is authorized to engage in trust business in the State of Washington. *Krueger v. Bank of California*, (Civil No. 738663, July 28, 1971, unreported). Indeed, had the Comptroller followed the appellant's reasoning in the instant case, the Supervisor of Banking for the State of Washington would not have been notified by the Comptroller of the Bank of California's relocation and new branch applications since the Comptroller's regulations provide for notice of such application to the "state official who supervises state commercial banks in the state in which the applicant is or will be located." 12 C.F.R. § 5.2(c).

Section 36(c) (1) and (2) of the Act must be interpreted in the light of congressional desire to foster a climate of "competitive equality" between national and state

banks; it is not for the courts, in construing the Act, to frustrate that clear congressional purpose. *First National Bank of Logan, Utah v. Walker Bank and Trust Co.*, 385 U.S. 252, 261, *reh. den.*, 385 U.S. 1032 (1966). In determination of this application to branch, the Comptroller made extensive factual inquiry into the banking industry in Seattle. The record establishes that branch banking there has grown at an accelerating rate. The number of competing branches in downtown Seattle has doubled in the last ten years. Based on his investigation, the Comptroller found the Bank of California unable to compete equally with state and national banks authorized to branch freely in Seattle. The District Court found that the evidence before the Comptroller amply supported his finding that without the right to branch in Seattle, the Bank of California would suffer a competitive disadvantage within the State of Washington.

To the extent that we are here concerned with the proper judicial review by the District Court of any factual determination of the Comptroller, we cannot disagree with the Court's finding that the Comptroller's "determinations are adequately supported and his decision reasonable." Clearly, they could not have been found "arbitrary" or "capricious." In this determination of "competitive equality" the findings of the Comptroller must be accorded great deference. "Courts have, in the main, consistently recognized the wide areas of discretion delegated by Congress to the Comptroller in the complex field of national banking . . . ." *Rampo Bank v. Camp*, 425 F.2d 333, 341 (3rd Cir.), *cert. denied*, 400 U.S. 828 (1970).

In addition to the specific limits placed on branch banking by 12 U.S.C.A. § 36, this section also requires that

branch banking be established in compliance with the state law governing branching of state banks. In this case the controlling state statute is RCW 30.40.020 of the Washington Banking Code. In pertinent part, it provides:

> "No bank or trust company shall establish or operate any branch in any city or town outside the city or town in which its principal place of business is located in which any bank, trust company or national banking association regularly transacts a banking or trust business, except by taking over or acquiring an existing bank, trust company or national banking association or the branch of any bank, trust company or national banking association operating in such city or town."

The Comptroller found no applicable Washington precedent interpreting "principal place of business" and determined that this was the "principal place of business within the State of Washington." The Comptroller further determined that Seattle was the principal place of business of the Bank of California for the purposes of RCW 30.40.020. This interpretation of the Washington statute should be affirmed. RCW 30.40.020 is specifically applicable to *state* banks. There is no such thing as a Washington state bank with its principal place of business outside of Washington. Moreover, this construction is supported by the words "within the state" in the first sentence of RCW 30.40.020. Interpretation of this statute to mean a "principal place of business" outside of the jurisdiction would be an awkward and strained application of Washington banking laws which regulate only banking activities within Washington. This view is further supported by the past practice of the Washington Supervisor of Banking in its relations with the Bank of California. In day to day administration of banking activities within Washington, the Supervisor has treated

Seattle as the principal place of business of the Bank of California.

The principle of competitive equality, discussed above, reinforces this interpretation of RCW 30.40.020. Since all state banks may branch freely within one city of the state, forbidding the Bank of California comparable banking opportunity is anti-competitive and runs counter to the clear policy of Congress as manifest in the National Banking Act.

We hold that the trial court, by appropriate standard of judicial review, properly upheld the Comptroller's determination.

JUDGMENT AFFIRMED

APPENDIX B

IN THE UNITED STATES COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Seattle Trust & Savings Bank, a bank incorporated under the laws of the State of Washington; The National Bank of Commerce, a national banking association; Pacific National Bank of Washington, a national banking association; Peoples National Bank of Washington, a national banking association; Puget Sound National Bank, a national banking association; Old National Bank of Washington, a national banking association; Seattle-First National Bank, a national banking association, *Plaintiffs,* and JOHN MCCARTHY, Supervisor, Division of Banking, Department of General Administration, State of Washington, *Plaintiff-Intervenor,* v. THE BANK OF CALIFORNIA, N.A., a national banking association, *Defendant,* and WILLIAM B. CAMP, Comptroller of the Currency of the United States, *Intervening Defendant.*	No. C-71 2433 LHB [Filed July 24, 1972]

MEMORANDUM OF REASONS IN SUPPORT OF SUMMARY JUDGMENT

On July 1, 1970, The Bank of California applied to the United States Comptroller of the Currency for permission (1) to relocate its existing Seattle office to a new location in Seattle and (2) to establish a new branch at 815 Second Avenue in Seattle, the site of its existing Seattle office. Upon receipt of the application, competing national and

state banks and the Washington Supervisor of Banking were notified of the application. No objections were filed to the relocation portion of the proposal, and that request was granted.

Objections were submitted to the second portion of the application and the Comptroller allowed presentations by all interested parties. An independent investigation was conducted by a national bank examiner, and the application was reviewed and analyzed by the Comptroller's staff. The Comptroller, on October 15, 1971, issued his opinion granting the application and setting forth the reasons for his action. That opinion describes the facts and procedural background and for those reasons is incorporated by reference herein.

On December 23, 1971, plaintiffs, seven banks from Washington, filed this action to enjoin the Bank from opening a second branch in the City of Seattle. By stipulation, the Comptroller of the Currency intervened as a defendant and the Washington Supervisor of Banking intervened as a plaintiff. In addition, another group of banks, Western Independent Bankers, have appeared as amicus curiae supporting the plaintiffs.

Plaintiff banks and defendants have each filed motions for summary judgment and all parties have agreed that this case is appropriate for determination on the cross motions for summary judgment. The Comptroller has submitted to this Court the administrative record, and all parties and amicus curiae have filed extensive briefs. On June 29, 1972, oral argument was held and all parties and amicus curiae were represented by counsel.

The files and briefs in this action reveal that mixed questions of law and fact were presented to the Comptroller. There is ample support in the record for the Comptroller's findings; plaintiffs concede that the facts as found by the Comptroller are to be accepted by this Court.

While several arguments have been made by plaintiffs, they make two basic claims: (1) that the Comptroller improperly determined that The Bank of California is "situated" in Washington for purposes of section 36(c) of the National Bank Act, authorizing branching by national banks; and (2) that the Comptroller also improperly determined that this branch was authorized by the Washington State branch banking statute, standards from which are incorporated by section 36(c).

The protestants before the Comptroller raised questions of Federal banking law and policy, thus, requiring the exercise of the Comptroller's expertise. Plaintiffs have not established that the Comptroller improperly determined the issues before him. Plaintiffs' same arguments were made before the Comptroller; from an independent review of the record and applicable authorities, the Comptroller's determinations are adequately supported and his decision reasonable.

The legislative history and the statutory scheme set up in 1933 by Congress to regulate branch banking by national banks and the evidence in the record support the Comptroller's determination that The Bank of California is "situated" in Washington for purposes of section 36(c) of the Act. To authorize the second branch in Seattle furthers the parity desired by Congress between state and national banks and, in particular with respect to branch

banking, the basic congressional purpose of establishing within each state "competitive equality" between state and national banks. The basic right of a national bank to expand by branching must be equal to a state bank's right within the State of Washington and the Comptroller's decision best accomplished this goal.

The evidence in the record amply supports the conclusion that without the right to branch in Seattle, The Bank of California will suffer a competitive disadvantage within that state. While Congress intended to limit interstate banking after 1933 when it enacted the branch banking statute involved here, it did so by authorizing branch banking wherever a bank was "situated," thus allowing branching in those states where each national bank had a banking office in 1933. The Bank of California has been located in the State of Washington since 1905—all parties agree that The Bank of California has properly maintained since that time a branch in Seattle and one in Tacoma, Washington. The mandate of Congress to limit branching to those states where a national bank was situated in 1933 is not violated by the Comptroller's approval of this branch. The Comptroller's interpretation of this Federal law question is not unreasonable, the facts found are supported by the record, and plaintiffs have not established a basis for overturning the Comptroller's decision.

Similarly, the Congressional determination that each national bank be treated equally with state banks in each state justifies the Comptroller's determination that Washington law does not bar this new branch. The Washington branch banking statute authorizes branch banking throughout that state, but requires that such branching be by acquisition of an existing bank if it is outside the

city where the branching bank's principal place of business is located. Plaintiffs and the intervening Supervisor of Banking claim that the Washington statute on branch banking precludes this branch because The Bank of California has its formal corporate principal place of business in San Francisco.

Each Washington state bank is allowed to branch internally in at least one city in the State of Washington, and a Washington state bank with its principal place of business in Seattle could establish another branch in Seattle by internal expansion (i.e., de novo). There is adequate support in the record for the finding that The Bank of California's principal place of business in Washington is Seattle, and that therefore it may branch in Seattle by internal expansion, just as a Washington state bank may do. This conclusion fully comports with the Congressional design that each national bank have competitive equality within each state. To adopt plaintiffs' position that The Bank of California must be regarded as having only a principal place of business in San Francisco for purposes of the Washington branching statute is to ignore the mandate of Congress and also the branch banking scheme of the State of Washington.

Plaintiffs argue that it is unfair to allow The Bank of California to have banking offices under its charter in more than one state. But such an argument is one to be addressed to Congress—which determined in 1933 that national banks were to have branching rights equal to state banks in each state where they were situated in 1933.

The Comptroller of the Currency properly applied section 36(c) of the National Bank Act, including the Wash-

ington branching standard. Neither Federal nor State law prohibits the establishment of this branch. The Bank of California is situated in Washington for purposes of section 36(c) of the National Bank Act, and the Washington State branch banking statute specifically authorizes a state bank whose Washington principal place of business is in Seattle to branch by internal expansion within that city. While the facts may be unique, the Comptroller's decision comports with Congressional purpose and Federal and State law. Accordingly, plaintiffs have failed to establish that the Comptroller's decision was erroneous.

Dated: July 21, 1972

/s/ Lloyd H. Burke

APPENDIX C

THE ADMINISTRATOR OF NATIONAL BANKS
WASHINGTON, D.C. 20220

[SEAL]

Office of the
Comptroller of the Currency

OPINION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF THE BANK OF CALIFORNIA, N.A., SAN FRANCISCO, CALIFORNIA, FOR PERMISSION, UPON RELOCATION OF THE BANK'S PRESENT OFFICE IN SEATTLE TO A NEW LOCATION, TO RETAIN AS A BRANCH BANK ITS PRESENT OFFICE BUILDING AT 815 SECOND AVENUE, SEATTLE, WASHINGTON.

On July 1, 1970, The Bank of California, N.A., applied to the Comptroller for permission (1) to relocate its existing branch office in Seattle to a new location within that city and (2) to establish a new branch at 815 Second Avenue, Seattle, Washington, the site of its existing Seattle office. In support of its relocation application, The Bank of California, N.A., stated that the "inefficient and crowded" layout of its present office prevented continued good service to its customers and "that the only solution to [its] problem is to relocate most of [the bank's] facilities to new, modern, spacious quarters." In a separate but simultaneous application the bank sought permission, if the Seattle office relocation was approved, to establish a new branch in Seattle at the site of its old office. In support of its request to open a new branch at the old office location, the bank explained that such an office was needed to continue serving those among the bank's customers who would find the new office location inconvenient.

Competing national and state banks and the Washington Supervisor of Banking were notified of the applications. No objections were filed as to the relocation portion of the bank's proposal and on February 26, 1971, the re-

location was approved by the Comptroller of the Currency.

Numerous protests, however, were received with respect to the bank's proposal to operate a new branch at the 815 Second Avenue location.[1] The objections to this part of the bank's proposal, although varying slightly and in some cases contradicting each other, amounted principally to the contention that The Bank of California, N.A., is prohibited either by federal or state law, or both, from operating an additional branch in Seattle, Washington. No request for a hearing was made by any of the protestants. However, each protestant was given the opportunity to submit written materials, and numerous documentary materials were received from protestants and applicant. In addition, a national bank examiner conducted a thorough independent study with respect to the application.

Seattle, Washington, is located in the northwestern sector of the United States with its metropolitan area spread around a scenic system of water known as Puget Sound and with direct access to the Pacific Ocean. The entire Puget Sound region has just completed a decade of growth and development. Population, employment, housing units, and number of businesses, all increased markedly from 1960 to 1970. Seattle has long been the leading service center for this area and, indeed, for the entire Pacific Northwest. The Seattle-Everett-Tacoma metropolitan area enjoyed a population increase of some 400,000 people from 1960-1970 and an increase of up to 500,000 more is projected by 1980.

The economy of Seattle and of surrounding King County has been subject to frequent cyclical swings because of a history of dependence upon the aerospace and shipbuild-

1. The record reveals protests to this part of the bank's proposal filed by Washington Mutual Savings Bank, Old National Bank of Washington, Peoples National Bank of Washington, Seattle-First National Bank, National Bank of Commerce, North West Bank, Seattle Trust & Savings Bank, Puget Sound National Bank, American National Bank (purporting to represent 17 other national banks, only one of which is identified as being located in Seattle), and State Chartered Banks of Washington (purporting to represent 58 unidentified member banks). The application was also questioned by the Washington State Supervisor of Banking.

ing industries. The basic economy of Seattle and the entire State of Washington, however, evidences stable long-term growth. Increasing diversity in management, shipbuilding and repair (both civilian and military), tourism, education and trade also point to increasing economic stability and a lessening of cyclical impact on future growth. Thus, although the record shows particular sensitivity of Washington State to the nation's present economic slump, the record also shows increasing expenditures for educational facilities, rising population, industrial diversification, and major office building construction. Even with a marked slowdown in residential construction in the Seattle area within the last two years, there have been major office buildings of 100,000 square feet constructed and other major buildings are under construction or in the planning stage. Moreover, the statistical evidence is that the occupancy level has dropped very little in spite of the additional 1 million square feet of space which has come on the market in a relatively short time.

The applicant The Bank of California, N.A., was organized in 1864 under the laws of the State of California and acquired branch offices in 1905 in Seattle and Tacoma, Washington, and Portland, Oregon, by purchasing the assets and assuming the liabilities of the London and San Francisco Bank, Ltd. In 1910 the applicant converted to a national bank and the three northwest branches remained in continuous operation. The records of this office indicate that the Washington and Portland offices are among the oldest national bank branches still in existence in the United States. The deposits of the Washington offices of the bank are presently $120 million at Seattle and $75 million at Tacoma. The applicant's Seattle office is by far the most important of its Washington offices in terms of deposits, number of employees, and location of key executives.

The major portion of applicant's Seattle business comes from customers in the downtown Seattle area. Nearly one half of the bank's individual customers and about one fourth of its corporate customers come from the immediate vicinity of the Seattle office. However, as a result of its long relationship to the Seattle area the bank also has

many customers in King County and in other areas surrounding Seattle.

The area of downtown Seattle within one square mile of the bank's office presently has 37 other offices of 11 different national and state banks and an additional 12 savings and loan offices. Changing traffic patterns and increasing demands of bank customers for greater convenience and more efficient service have prompted at least 7 state and national banks to establish more than one office in that one square mile area. The efforts of the applicant to continue to provide adequate service to its customers as well as the keen competitive pressures provided by other banks in the area have, over a number of years, placed increasing pressure upon the available physical facilities of the bank's one Seattle office. Faced with these pressures, the bank, during the period August to November 1968 employed an architectural firm to examine the feasibility of remodeling and expanding the space then occupied (including space leased in the nearby Exchange Building). The architectural firm's study convinced the bank that it could not develop sufficient office space at 815 Second Avenue to meet the bank's immediate or future needs, and that while the bank could extensively remodel its leased quarters in the Exchange Building to accommodate present and future needs, the cost of this project would be so high as to be economically unfeasible. The bank's management accordingly concluded that the only reasonable and realistic approach was to abandon the prospect of remodeling existing quarters and, instead, to relocate the Seattle office to new modern quarters specifically designed to meet the needs of the bank and to serve its customers more efficiently. After further exploration of alternatives, the bank's management determined that relocation to a new office building to be constructed on a site bounded by 4th and 5th Avenues and Madison and Marion Streets, Seattle, Washington, was in the best interest of the bank and its customers. The building there proposed would provide 200,000 square feet of garage space and 600,000 square feet of office space, large enough to assure a nucleus of customers in the new location in addition to the existing customers of the bank who would

find the new location as convenient as, or more convenient than, the present one.

However, the bank also determined—and the Comptroller concurs—that a relocation of its Seattle office but a few blocks would result in significant inconvenience to a number of its customers. The numerous separate offices operated by competing banks in downtown Seattle only a few blocks from each other together with statistics indicating that some 41 percent of the applicant's individual customers came from the immediate vicinity of its office and 25 percent of its corporate customers from nearby locations prompted the conclusion that a strong convenience orientation of banking customers in downtown Seattle affects banking preferences. Thus applicant's expectation that the relocation of its Seattle office two steep city blocks from the current site would introduce the hill as a physical barrier, discourage customers, and prompt the transfer of a number of accounts to other banks seems realistic under the circumstances. Applicant therefore proposed, as have a number of its major competitors in downtown Seattle, to establish a new business district branch to continue to provide maximum convenience and service to a significant portion of its customers. Applicant estimated that of some 27,000 total accounts approximately 8,000 would remain at the Second Avenue office if such should continue to be operated as a branch and the remaining 19,000 accounts would be transferred to the relocated office. The number of existing customers who would continue to do their banking business at the 815 Second Avenue office if it should remain open would unquestionably provide adequate support for such an office.

None of the protestants to the applicant's proposal have contested the economic justification and practical competitive pressures which prompted the bank to apply both to relocate its existing Seattle office to more modern and efficient quarters and retain a branch in the portion of the property now occupied by the bank which is owned by it. Nor do any protestants challenge the accuracy of any of the factual materials submitted by applicant in support of its simultaneous applications. Instead, protestants have urged that this applicant is simply not permitted by applicable federal and state statutes to operate

any additional branch office in Seattle, Washington. Thus, protestants contend that federal law does not permit The Bank of Cailfornia to establish a new branch in Seattle because, in the view of these protestants, The Bank of California is not "situated" in the State of Washington within the meaning of the federal branching statute, 12 U.S.C. §36(c)(2). Additionally—and to some extent alternatively—a number of protestants urge that even if applicant is "situated" in Washington it may not establish an additional branch in Seattle, because, in these protestants' view, applicant's "principal place of business" is not "located" in Seattle as required for further branching in that city by the Washington branching statute, Wash. Rev. Code §30.40.020. The Washington Supervisor of Banking also urges that Bank of California operates its existing branches in Washington only by a "legislative grace" granted by that state which "grace" does not carry with it the "right to do anything more than continue its present business in that [state]. . . ."

The applicant and the South Jersey National Bank, Camden, New Jersey (which operates a branch in Philadelphia), are the only national banks which operate branches in states other than those in which their main offices are located. Consequently, this application presents novel—and perhaps unique—questions concerning the applicability of the branching provisions of federal and state law. The Comptroller's resolution of these questions has been substantially aided by the detailed briefs and other documentary submissions of applicant and protestants.

The McFadden Act of 1927, 44 Stat. 1228, authorizes the continued operation of national bank branches in lawful operation on February 25, 1927. 12 U.S.C. §36(a). In addition, as amended by the National Banking Act of 1933 (48 Stat. 189) it authorizes national banks, with the Comptroller's approval, to establish branches ". . . at any point within the state in which such association is situated . . ." subject to capital and location restrictions of state laws specifically incorporated. 12 U.S.C. §36(c)(2). The word "situated" means "having a site, situation or location: located . . ." according to Webster's Third New International Dictionary. Applicant clearly has a

"[banking] site . . . or location" in Seattle. Thus, this application poses the federal law question of whether "situated" must receive a construction different than its ordinary one because of its context in 12 U.S.C. §36(c)(2).

Applicant argues that principles of statutory construction and competitive equality require that the term "situated" in the context of 12 U.S.C. §36(c)(2) be given its ordinary meaning. In particular, the applicant notes that its Seattle operations are presently subject to the provisions of Washington rather than California law under various provisions of the National Bank Act which refer to ". . . the laws of the State in which the national bank is *located.*" Thus, the applicant argues that its Seattle office may accept public deposits of the State of Washington and, pursuant to 12 U.S.C. §90, may provide collateral security therefor in the manner authorized to state banks by the laws of Washington. Similarly, the lending activity at the applicant's Seattle branch is, by virtue of 12 U.S.C. §85, subject to applicable interest rate limitations of the State of Washington. In addition, the right of applicant's Seattle branch to exercise trust powers under 12 U.S.C. §92a is made subject to the requirement that its competitors in Washington be permitted to exercise such powers. The applicant concludes that, if it is "located" in Washington for purposes of these sections of the National Bank Act, it should be considered "situated" there for purposes of this application, and able to compete through branch expansion on an equal basis with state-chartered banks situated in Seattle.

The protestants (including the Washington Supervisor of Banking) take the position that the word "situated" must be construed to refer to the site of the bank's main office, *i.e.*, California. Thus, an informal staff opinion of the Washington Attorney General's Office submitted on behalf of the State Supervisor states that "[t]he bank of California is situated in California and not in Washington, since it merely maintains a branch in Washington."[2] The legal opinions submitted by other protestants reach the same conclusion on the grounds that "[d]ictionary defini-

2. This staff memorandum does not purport to be a formal opinion of the Washington Attorney General.

tions are not helpful" in construing the meaning of "situated"; that the legislative intent to prohibit interstate branching by national banks requires that "situated" be interpreted to refer to the main office location; and, in addition, that the holdings in venue and jurisdiction cases establish that national banks are "located" where their main offices are established.

Neither applicant nor protestants have been able to cite specific support for their positions in the legislative history of 12 U.S.C. §36(c)(2). The efforts of both applicant and protestants to draw statutory analogies through focusing upon particular words in Section 36(c)(2) likewise have been of only marginal aid because of the substantial difference in purpose of the statutory provisions to which analogies are drawn.[3] Finally, the diligent efforts

3. Thus protestants rely upon such cases as *American Surety Co. of New York v. Bank of California*, 44 F. Supp. 81 (D. Ore. 1941), *aff'd.*, 133 F.2d 160 (9th Cir. 1943), holding that the word "located" as used in the section now codified as 28 U.S.C. § 1348 refers to the location of the applicant's main office. However, the court there was clearly striving to sustain jurisdiction on diversity of citizenship and analogized for that purpose to a long line of cases holding a corporation with national operations to be a citizen of the state in which the corporation is organized. Similarly, in *Leonardi v. Chase National Bank of New York*, 81 F.2d 19 (2d Cir. 1936), *cert. denied*, 298 U.S. 677, the obvious purpose of the venue provisions to protect national banks and to prevent disruption of their business which might result in their books being sent to distant areas in connection with litigation, prompted the court of appeals to hold that a national bank is "established" only in the judicial district in which it maintains its main office. This so-called analogy relied upon by protestants, however, has for some time been largely eroded by other policies and requirements of a modern commercial society. Thus, in *Lapinsohn v. Lewis Charles, Inc.*, 240 A.2d 90 (1968), *cert. denied sub nom, First Camden National Bank & Trust Co. v. Lapinsohn*, 393 U.S. 952, the Superior Court of Pennsylvania found that the First National Bank & Trust Co. (now South Jersey National Bank), Camden, New Jersey, had waived the protective venue provision by operating a branch in Philadelphia, Pennsylvania.

Applicant argues, on the other hand, that other sections of the National Bank Act (85, 90, 92a of Title 12) are obviously intended to help national banks achieve parity with state chartered competitors wherever they may be located and in furtherance of this statutory pattern 12 U.S.C. § 36(c)(2) should be construed to permit Bank of California to compete on an equal basis with other national banks in Washington. This competitive equality argument advanced by applicant has some appeal but is not, in the Comptroller's opinion, determinitive of the question.

of applicant and protestants have also failed to produce any enlightening judicial decisions.[4]

The basic question thus boils down to whether, under the circumstances of this application, there is some element of "unfairness" in applying §36(c) in the manner required by its plain words. In that connection, the protesting banks urge that it is somehow *competitively* "unfair" to allow The Bank of California to maintain its former main Seattle office site as a branch. The record discloses, however, no evidence of economic injury or element of "unfair competition" which would flow from allowing applicant to maintain this site as a new branch. Instead, the record discloses that each of applicant's major competitors in downtown Seattle have found it necessary to open numerous branch offices throughout the city in order to continue to furnish adequate services to their customers. Applicant thus asks no more than to be allowed to compete on an equal basis with banks who may branch freely in the same area. The grant of such an application under circumstances of undisputed need would appear to be entirely consistent with the goal of "competitive equality" attributed by protestants to 12 U.S.C. §36 and within the legislative history of 12 U.S.C. §36(c)(2) as ". . . a major experiment with branch banking" to allow national banks to establish branches ". . . at any point within the borders of the state in which they exist." Sen. Rept. 77, 73rd Cong., 1st Sess., p. 11 (Emphasis added).

The protestants' argument that the word "situated" must be construed to refer to the site of the bank's main office, moreover, appears to be more an assumed conclusion than a reasoned one. Thus, practically all protestants

4. *Boatmen's National Bank of St. Louis v. Hughes*, 53 N.E.2d 403 (Ill. 1944), cited by protestants, involved an attempt by a national bank to establish a trust office in a state in which the bank was not physically located. After finding that the bank's proposal was barred by the branch banking prohibition of Illinois law, the Court states (p. 405) that § 36(c) "expressly prohibits the opening of any branch or additional office in any state other than that of its domicile." This statement is inaccurate, however, since § 36(c) in fact expressly limits branching by national banks to "any point within the State in which said association is situated," subject to the location and capital restrictions of state law and does not by its terms limit branching to the State of corporate citizenship.

are quite willing to immediately equate "located" in a procedural statute (e.g., 12 U.S.C. §94; 28 U.S.C. §1348) where, quite naturally, the word is applied by the courts as equivalent to domicile (or state of citizenship) with the word "situated" as used in 12 U.S.C. §36(c)(2); yet, protestants are unwilling to recognize the more apparent equation between the word "situated" as used in 12 U.S.C. §36(c)(2) and the word "located" as used in other substantive sections of the National Bank Act such as 12 U.S.C. §§85, 90, and 92a. In addition, many of the bank protestants appear to concede that applicant may be "situated" in Washington for some purposes inasmuch as these protestants suggest that applicant could acquire additional branches in Washington through the direct acquisition rather than the *de novo* route.

Protestants' reliance upon a so-called congressional intent to prohibit interstate branching as a basis for preventing applicant from carrying out that expansion in Seattle which it believes necessary to continue to serve its customers also appears to miss the mark. Applicant already has branches in three states clearly protected by 12 U.S.C. §36 and there is no evidence of any congressional policy to prohibit necessary branch expansion, allowed by state statutes ". . . within the borders of the state in which [applicant] exist[s]." Indeed, Congressional policy is, if anything, to the contrary.

Thus, in enacting the Holding Company Act of 1956, 70 Stat. 133, Congress, in effect, recognized interstate bank operations and determined to place no federal restriction upon branching within the states in which a Holding Company's banks maintained banking offices at the time of the Act's enactment. See 12 U.S.C. §§1841, 1842. Inasmuch as The Bank of California must compete in Washington with banks permitted to branch freely within the state as part of multi-state holding company operations, a restriction upon The Bank of California's branching authority within Washington would only serve to perpetuate a basic competitive inequality in a manner at least inconsistent with Congressional policy in the Holding Company Act.[5]

5. Indeed, there is some evidence that Congress was aware specifically of the multi-state branches of The Bank of California at the time of the

After full consideration of the arguments of applicant and protestants, the Comptroller concludes that protestants have not advanced any good reason to accord to the word "situated" as used in 12 U.S.C. §36(c)(2) a meaning different from its ordinary one. Accepting the common definition of the term, therefore, the Comptroller concludes that The Bank of California, N.A., is "situated" in Seattle within the meaning of 12 U.S.C. §36(c)(2).

The additional contention of some protestants to the effect that applicant's "principal place of business" is not "located" in Seattle as required for further branching in that city by the Washington branching statute, Wash. Rev. Code §30.40.020, presents further interpretative questions. Section 30.40.020 of the Revised Code of Washington permits, subject to capital restrictions not here involved, the establishment of branches "in any city or town within the State," provided that "[n]o bank . . . shall establish . . . any branch in any city or town outside the city or town in which its principal place of business is located . . ." in which any bank regularly transacts a banking business, except by taking over an existing bank or branch. Under 12 U.S.C. §36(c), The Bank of California is unquestionably subject within Washington to the same branch location restrictions as are imposed upon Washington banks by the applicable Washington statutes. Accordingly, The Bank of California may be permitted to establish a new branch at the 815 Second Avenue location if The Bank of California's "principal place of business is located . . ." in Seattle within the meaning of Section 30.40.020 of the Revised Code of Washington.[6]

The protestants urge that the principal place of business of the Bank of California, N.A., is in San Francisco, and

passage of the McFadden Act of 1927 and the National Banking Act of 1933. Hearings on S. 3316 and H.R. 8887, Senate Banking and Currency Committee, 68th Cong., 2d Sess. (Jan. 1925), p. 71. The subsequent silence of Congress with respect to this bank's competitive opportunities in Washington arguably implies a deliberate Congressional policy of non-interference.

6. In view of the definition of "state banks" in 12 U.S.C. § 36(h) to include "savings bank," a national bank in Washington is arguably entitled to branch also at those locations permitted Washington mutual savings banks. The present application does not require resolution of this question however.

consequently, that *de novo* branch expansion in Seattle is prohibited by state law. Some of the protestants apparently concede, however, that the applicant has it "principal place of business" in Seattle for some purposes under Section 30.40.020 for these protestants urge that The Bank of California could expand its branch system in Washington but only by acquisition of an "existing bank . . . or branch." In addition, the informal legal opinion submitted on behalf of the Washington Supervisor of Banking states that The Bank of California, N.A., operates its Washington branches only as a matter of "legislative grace" pursuant to RCW 30.04.300, a statute which permits the continued operation of branches of "foreign banks" in operation on March 10, 1917, but does not provide for the establishment of additional branches by such banks.

The applicant argues that its "principal place of business" for purposes of RCW 30.40.020 is in Seattle, on the grounds (1) that this construction of the state statute is consistent in the context of other sections of the Washington banking code, and that the similar language of RCW 30.04.030 has been interpreted by the Washington Supervisor of Banking as referring to the Seattle branch of a bank headquartered out of state; (2) that this interpretation comports with the branch banking policy of the State of Washington; and (3) that a different interpretation frustrates the doctrine of competitive equality and raises constitutional difficulties.

Neither the applicant nor the protestants have been able to furnish any judicial interpretations of the phrase "principal place of business" as used in RCW 30.40.020 which are of assistance in connection with this application.[7] As

7. The Association of State Chartered Banks in Washington urges that the decision of the Supreme Court of Washington in *State v. Vincent*, 357 Pac. 849 (1927) establishes that "principal place of business" refers to the applicant's San Francisco location. However, the *Vincent* case involved the statutory right of a stockholder or creditor to inspect the books and records of a Washington corporation at the "office or principal place of business of the company" when a parallel provision of Washington law required a designation in the company's articles of incorporation of the city or locality in which the "principal place of business of the company is to be located." The court's holding that these two closely related statutory provisions granted the stockholder the right to examine the company's records at the place named in its articles of incorporation

noted by the informal opinion of the Office of the Attorney General of the State of Washington, RCW 30.04.300 authorizes the continued operation of branches in Washington of "foreign banks," but does not authorize such banks to establish additional *de novo* branches in Washington. However, the Washington Attorney General's office overlooks that national banks are specifically excluded from the statutory definition of "foreign banks"[8] (see RCW 30.04.-010) and there is no indication in Washington's banking code that the state legislature intended to permit, to foreclose, or even to consider whether a national bank with existing branches in Washington and a main office location outside the state should be permitted to establish *de novo* branches in Washington.

The branch banking policy of the State of Washington as enunciated in RCW 30.40.020 permits state-wide branching into bankless communities by banks meeting the necessary capital requirements, while affording home office and branch office protection to banks in communities outside the applicant's principal place of business" in this section establishes the community available for branch expansion regardless of the existence of other banks or branches in the community. Stated differently, banking offices in the community in which one bank's "principal place of business" is located are not statutorily protected from *de novo* branch expansion by that bank. If the "principal place of business" of The Bank of California, N.A., for purposes of this statute is San Francisco, then a literal reading of the statute would purport to grant protection from bank entry by the applicant to banks in California communities outside San Francisco—an absurd proposi-

rather than at the site of its operations, appears of little relevance in construing "principal place of business" in the entirely different context of RCW 30.40.020.

8. While it could be argued that this exclusion refers only to national banks with main offices in Washington, this approach appears unpersuasive in view of the fact that the regulatory scheme provided for "foreign banks" by RCW 30.40.300 contemplates their adherence, subject to criminal penalties, to regulations provided for state banks, and, additionally, subjects them to supervision by the Office of the State Division of Banking, thus establishing a regulatory framework for "foreign banks" incompatible with that provided by Congress for national banks. (See, e.g., 12 U.S.C. §§ 481, 484); *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896).

tion. Moreover, such an interpretation requires looking outside the State of Washington for the "principal place of business" of a bank which the laws of the State of Washington do not treat as a "foreign bank." If the "applicant's principal place of business" within the meaning of RCW 30.40.020 is considered to be Seattle, these inconsistencies with other portions of the Washington banking code are avoided[9] and the result comports with the state branching policy of permitting expansion by a bank, at the discretion of the appropriate supervisor, within the Washington community where its principal operations are conducted.[10] Upon consideration of each of these factors therefore, the Comptroller is convinced and concludes, that within the meaning of RCW 30.40.020 applicant's "principal place of business" is in Seattle.

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9. Indeed, applicant suggests that, presumably to avoid similar logical inconsistencies, the Washington Supervisor has long followed an administrative practice which gives practical recognition to banks having a "principal place of business" in Washington although headquartered outiside the state. Thus, applicant points out, for example, that RCW 30.40.030 requires that the Washington Supervisor of Banking mail a copy of any rules and regulations he may issue to each bank "at its principal place of business" and that under this section the Washington Supervisor mails rules and regulations to the Seattle office of the Canadian Imperial Bank as the bank's "principal place of business" in Washington, although the bank is headquartered in Canada.

10. While Washington branch banking law defines "branch bank" as "any office of any bank . . . other than its principal place of business . . ." (RCW 30.04.010), the definition of a branch of a national bank is a matter of federal law (*First National Bank v. Dickinson*, 396 U.S. 122 (1969)), and in any event this state law definition of "branch bank" sheds no light on the inverse definitional problem presented by this application.

Based on the foregoing, on the information gathered by this Office and submitted by the applicant and protestants, and based upon the Comptroller's knowledge of the banking industry as a whole and the banking and economic factors in Seattle, Washington, in particular, the application of The Bank of California, N.A., for permission, upon relocation of its existing Seattle office to a new location, to establish a branch at 815 Second Avenue, Seattle, Washington, is approved.

Dated: October 5, 1971

s/WILLIAM B. CAMP

APPENDIX D

12 U.S.C. § 36

§ 36. Branch Banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such state from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "na-

tional bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operations after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term "consolidation" includes a merger.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implica-

tion or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. As amended July 15, 1952, c. 753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub.L. 87-721, 76 Stat. 667.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch

agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(g) This section shall not be construed to amend or repeal sections 601-605 of this title, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(h) The words "State bank," "State banks," "bank," or "banks" as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws. R.S. § 5155; Feb. 25, 1927, c. 191, § 7, 44 Stat. 1228; June 16, 1933, c. 89, § 23, 48 Stat. 189, 190; Aug. 23, 1935, c. 614, § 305, 49 Stat. 708.

RCW 30.40.020

A bank or trust company having a paid-in capital of not less than five hundred thousand dollars may, with the approval of the supervisor, establish and operate branches in any city or town within the state. A bank or trust company having a paid-in capital of not less than two hundred thousand dollars may, with the approval of the supervisor, establish and operate branches within the limits of the county in which its principal place of business is located. A bank having a paid-in capital of not less than one million dollars may, with the approval of the supervisor, establish and operate branches in any foreign country. The supervisor's approval of a branch within this state shall be conditioned on a finding that the resources in the neighborhood of the proposed location and in the surrounding country offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate objects covered by this title. The supervisor's approval of a branch in a foreign country shall be conditioned on a finding that the proposed location offers a reasonable promise of adequate support for the proposed branch, that the proposed branch is not being formed for other than the legitimate objects covered by this title and that the principal purpose for es-

tablishing such branch is to aid in financing or facilitating exports and/or imports and the exchange of commodities with any foreign country or the agencies or nationals thereof.

The aggregate paid-in capital stock of every bank or trust company operating branches shall at no time be less than the aggregate of the minimum capital required by law for the establishment of an equal number of banks or trust companies in the cities or towns wherein the principal office or place of business of such bank or trust company and its branches are located.

No bank or trust company shall establish or operate any branch, except a branch in a foreign country, in any city or town outside the city or town in which its principal place of business is located in which any bank, trust company or national banking association regularly transacts a banking or trust business, except by taking over or acquiring an existing bank, trust company or national banking association or the branch of any bank, trust company or national banking association operating in such city or town.